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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ANTOLIN ANDREW MARKS,

11 Plaintiff,

12 v.

13 DEENA GEPHARDT, *et al.*,

14 Defendants.

15 Case No. C07-5259RJB

16 ORDER STRIKING REPORT
17 AND RECOMMENDATION AS
18 MOOT

19 This matter comes before the Court on the Report and Recommendation of U. S. Magistrate Judge
20 J. Kelley Arnold. Dkt. 47. The Court has considered the Report and Recommendation, objections to the
21 Report and Recommendation, if any, and the record.

22 Plaintiff filed this 42 U.S.C. 1983/Bivens action on May 15, 2007. Dkt. 1. Plaintiff is incarcerated
23 at the Northwest Detention Center (“NDC”) and is going through the process of being deported. *Id.*
24 Plaintiff names employees of GEO, a contractor at the NDC, and federal employees as defendants. *Id.*

25 On November 19, 2007, Defendants Charles McBurney, Tony Nicholas, and William McHatton (all
26 employees of GEO) filed an answer to the complaint. Dkt. 28. Defendants McBurney, Nicholas, and
27 McHatton make a counterclaim for abuse of process, alleging that Plaintiff’s claims were not made in good
28 faith, were frivolous, and intended to harass and intimidate them. *Id.* Plaintiff filed a Motion for Judgment
on the Pleadings, seeking dismissal of Defendants McBurney, Nicholas, and McHatton’s counterclaim.
Dkt. 33. On January 9, 2008, Judge Arnold filed his Report and Recommendation regarding Plaintiff’s
Motion for Judgment on the Pleadings. Dkt. 47. On January 10, 2008, Plaintiff and Defendants

1 McBurney, Nicholas, and McHatton stipulated that the matter "has been fully settled and compromised and
2 may be dismissed with prejudice and without costs as to Defendants McBurney, Nicholas, and McHatton."
3 Dkt. 46. The order was entered that same day. Dkt. 48. On January 22, 2008, Judge Arnold entered an
4 order striking Plaintiff's pending Motion for Judgment on the Pleadings (Dkt. 33) as moot. Dkt. 51, at 1.
5 Judge Arnold noted that the stipulation dismissing Defendants McBurney, Nicholas, and McHatton did not
6 specifically state whether the counterclaim was dismissed. *Id.* Judge Arnold informed the parties that the
7 Court would consider the counterclaims as having been dismissed by the January 10, 2008 stipulation
8 unless someone notified the Court to the contrary within 30 days. *Id.* Thirty days have now lapsed, and
9 no further pleadings have been filed regarding the status of the counterclaim. The Court is left to assume
10 that the counterclaim was either resolved by the stipulation or abandoned. In any event, the Report and
11 Recommendation, filed on January 9, 2008, addressing Plaintiff's Motion for Judgement on the Pleadings
12 regarding Defendants McBurney, Nicholas, and McHatton's counterclaim (Dkt. 47) should be stricken as
13 moot.

14 Accordingly, it is hereby **ORDERED**:

- 15 • The Report and Recommendation (Dkt. 47) is **STRICKEN AS MOOT**;
16 • The Clerk is directed to send copies of this Order to Plaintiff, all counsel of record, and to the Hon.
17 J. Kelley Arnold.

18 DATED this 28th day of February, 2008.

19 
20 ROBERT J. BRYAN
21 United States District Judge

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